

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force

FROM: Matthew McKinney, Executive Director
Gerald Mueller, Project Coordinator
Mark Lambert, Project Associate

SUBJECT: Summary of March 3, 2003 Meeting

DATE: November 22, 2005

Participants

The following members of the Task Force were present:

Task Force Members:

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| Harvey Hackett | Bitterroot Water Forum |
| Fred Lurie | Blackfoot Challenge |
| Bill Slack | Lower Flathead (St. Ignatius) |
| Steve Fry | Avista Corp. |
| Phil Tourangeau | Confederated Salish and Kootenai Tribes |
| Marc Spratt | Flathead Conservation District |
| Gail Patton | Sanders County |
| Matt Clifford | Clark Fork Coalition |
| Larry Van Rinsum | Flathead Conservation District |

Staff:

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|----------------|---|
| Gerald Mueller | Montana Consensus Council (MCC) |
| Mark Lambert | MCC |
| Mike McLane | Montana Department of Natural Resources and Conservation (DNRC) |

Meeting Goals

1. Review and confirm options to protect water rights
2. Develop options to promote the orderly development of water
3. Determine potential impacts of the Proposed Bull Trout Recovery Plan on water management
4. Discuss work of Task Force Subcommittee on Research and Technical Information

Discussion: New Legislation

HB 720

- Adjudication priority: Will adjudication get less attention because of this bill (directs resources elsewhere)?
- Does it fail to protect existing water rights?
- No “classes” of water rights should be established
- Should rules be implemented to establish uniformity for correct and complete application and completion?
- Create Task Force subcommittee to draft a letter stating the Task Force’s concerns and position on this bill
- Members of the subcommittee to draft the letter: Matt Clifford and Holly Franz

- Committee should look over the draft.

HB 683

- Several concerns about this bill, but Task Force failed to specify these concerns to the level of advising the legislature on the bill.

Discussion: Options to protect the security of water rights

- Review and confirm options to protect water rights
- Develop options to promote the orderly development
- Priority for completing adjudication and compact negotiation
- Concern—costs to senior rights holders is so high that they can't afford to protect their water
- Raise bar for objections—to deal with frivolous objections—through DNRC rulemaking process
- Anyone could file an objection, but DNRC rulemaking could establish standards to eliminate so many frivolous objections
- DNRC needs to go through a public rulemaking process, solicit public opinion
- Complete adjudication would solve many of these problems
- Change focus on water issues to quantity
- Priority for funding resources to adjudication

Discussion: Preliminary Action Plan for Research and Technical Information (Marc Spratt and Mike McLane)

1. The focus here should be on the information that is needed to adequately address the three issues outlined in HB 397:
 - Strategies to protect the security of water rights;
 - Strategies to promote the orderly develop of water; and
 - Strategies to provide for the conservation of water.
2. We cannot use water rights records to determine demand of water
 - most are not correct
 - we must consider diversionary uses
 - we must understand return flows
3. We need to base decision on existing data—we don't have the resources to gather new data
4. Allocation modeling might be available for basin through Bureau of Reclamation
 - Will allocation modeling be of long-term value?
5. How much will the services described in the *Preliminary Action Plan for Research and Technical Information* cost the Task Force? How long will it take to determine that?
 - Mike will talk to Rich Moy to determine when this can get done, and exactly what the needs are.
 - Gerald and Matt will look at the budget, RFPs, etc.
 - The money needs to be allocated by May 1.
6. DNRC will complete items in "Task # 2: Create a profile of basin-wide issues" from *Preliminary Action Plan for Research and Technical Information*.

Break into subgroups: Options to address the orderly development of water

Group #1

- A. *Current activities in my watershed or sub-basin to promote the orderly development of water:*

- Prior appropriation doctrine promote the orderly development of water.
- EPA has required a shift from surface to groundwater for municipal water supplies.
- Federal standards for low-flush toilets and appliances such as wash machines
- Irrigation efficiency, measured in terms of water use, is increasing.
- Compact negotiations are underway with the Confederated Salish and Kootenai Tribes.
- Studies are updating sub-basin hydrology.
- Studies have been conducted of basin scale water quality and quantity.
- The Flathead Basin Commission has developed a TMDL for Flathead Lake.
- A number of 3rd order watershed groups are operating.
- USFS management is beginning to consider vegetation management to produce water.
- Counties and cities are managing flood plains.
- Water quality districts have been formed in some areas.
- Irrigation districts review sub-division applications for potential impacts on the irrigation system.
- DEQ sub-division review requires a demonstration from a developer of the availability of water.
- On the Confederated Salish and Kootenai Tribes Reservation, the courts required that instream flows be maintained.
- Fish flow requirements have been established through FERC licenses.
- Our basin has been closed to certain new surface water rights, creating a water rights market.
- Revision of USFS forest plans is underway.

B. Other options that might be implemented in my watershed or sub-basin to promote the orderly development of water:

Regulatory/Management Options

- The adjudication and the compact negotiations could be finished.
- An entity could be created to provide coordination among water users, e.g. the entity could coordinate water quantity and quality concerns.
- Reservoirs in wilderness areas that have been abandoned could be utilized again.
- The position of water commissioners could be strengthened by increasing pay and benefits and changing the way they are funded.
- Return flows could be actively managed.

Education/Information Options

- The ground water recharge rate could be identified.
- The availability of ground water could be evaluated.
- Water availability could be studied to identify places of stress.
- Sewer system installation could be studied.
- Support could be provided for water curriculum in public schools.
- Increased focus on water issues and increased water education for legislators could be provided by re-invigorating the water policy committee.
- An interim legislative committee could be appointed to consider the water rights adjudication.

Market-Based Options

- Water storage could be increased.
- More water rights could be leased.
- Incentives could be provided for centralized and/or decentralized water supply and sewage systems could be provided.

Group 2

A. Current activities in my watershed or sub-basin to promote orderly development of water:

- The water rights permitting and change processes function.
- The water rights adjudication is underway and reserve water right compact commission is negotiating compacts with the Confederated Salish and Kootenai Tribes Reservation and the United States Forest Service.
- Sub-basins to the Clark Fork Basin have been closed.
- Small watershed councils are active.
- Law suits have been filed to protect water investments and interest.
- Water measurement devices have installed on diversions.

B. Other options that might be implemented in my watershed or sub-basin to promote the orderly development of water:

- Water conservancy districts could be created that:
- Focuses on water development, conservation and storage;
- Has a taxing authority;
- Supplements state jurisdiction;
- Options for increasing water use through use of high spring flows and snow melt (rain on snow events) could be examined.
- Water management could be more detailed and improved.
- Utilize ground water storage (technically difficult).
- Defining more accurately sub-basin hydrology and water, biological, and economic tradeoffs.
- Consider ground water-surface water interrelationships.
- Protect and rehabilitate wetlands, e.g. through flood plain and wetland management, bank storage, etc.

Presentation: Potential Impact of the Proposed Bull Trout Recovery Plan on Water Management in the Clark Fork River Basin: Wade Fredenberg, U.S. Fish and Wildlife Service

The US Fish and Wildlife Service (USFWS) has released proposed critical habitat designation and a draft recovery plan for bull trout. The draft plan can be found at <http://pacific.fws.gov/bulltrout/recovery>. Written comments on the plan may be mailed to the Fish and Wildlife Service, Snake River Basin Office, Attention Robert Ruesnik, 1387 W. Vinnell Way, Room 368, Boise, ID 83709. Comments should be submitted to John Young, Bull Trout Coordinator, USFWS, 911 N.E. 11th Ave., Portland, OR 97232.

Comment period on recovery plan closes on March 29.

Comment period on critical habitat closes on May 12.

Critical habitat Final Rule released in October 2003.

Bull Trout Recovery Plan should be taken into consideration but it won't drive any of the processes. It may affect how some of the diversion structures are operated with recommendations to improve their efficiency.

Please see "Bull Trout Draft Recovery Plan: Clark Fork River Recovery Unit" for more details regarding bull trout management in the Clark Fork Basin. Mr. Fredenberg distributed this document during his presentation. Contact Mark Lambert for extra copies.

Next Steps

1. At the next meeting, Task Force members should be ready to brainstorm on the third issue outlined in HB 397, dealing with the conservation of water, and review the work on the Orderly Development of Water.
2. We will hear a report from DNRC about the research plan and discuss the research plan and budget. We will also review a draft of the HB 720 letter.
3. Holly Franz of PPL Montana will address two questions in her presentation on the Kerr Dam at the next meeting: (1) how often, if at all, does PPL need to make a call on the river to satisfy their water rights? and (2) how, if at all, will PPL's existing water rights at Kerr Dam limit future consumptive uses of water in the Flathead basin?

Next Meeting

The next meeting will be held on April 7 at the **Fish, Wildlife and Parks Headquarters at 3201 Spurgin Road in Missoula**, from 9:30 a.m. to 4:00 p.m. A meeting agenda will be sent prior to the meeting.